

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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GARRY MURRAY,

Petitioner,

-v.-

9:04-CV-0027  
(LEK)(RFT)

TIMOTHY MURRAY, Superintendent,

Respondent.  
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**APPEARANCES:**

**OF COUNSEL:**

GARRY MURRAY  
Petitioner, *pro se*  
99-A-2434

HON. ANDREW M. CUOMO  
Office of the Attorney General  
State of New York  
Department of Law  
The Capitol  
Albany, New York 12224

GERALD J. ROCK, ESQ.

LAWRENCE E. KAHN, U.S. DISTRICT JUDGE

**ORDER**

On January 9, 2004, Petitioner Garry Murray ("Murray" or "Petitioner") filed a petition for a writ of habeas corpus with the Court. Dkt. No. 1. On June 14, 2007, Magistrate Judge Randolph F. Treece filed a Report-Recommendation, recommending that the Petition be denied. Docket No. 40. The Report-Recommendation was approved, and the Petition Dismissed, by a Decision and Order of this Court filed September 11, 2007. Docket No. 44. Murray has appealed that dismissal to the Second Circuit and now seeks a Certificate of Appealability ("COA"). Docket No. 52.

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.<sup>1</sup>

A COA may only be issued “if the applicant has made a substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). After reviewing the relevant portions of the file in this action, and for the reasons set forth in the Court’s Decision and Order and Magistrate Judge Treece’s Report-Recommendation, the Court finds that Murray has failed to make such a showing herein. Therefore, the Court denies his request.

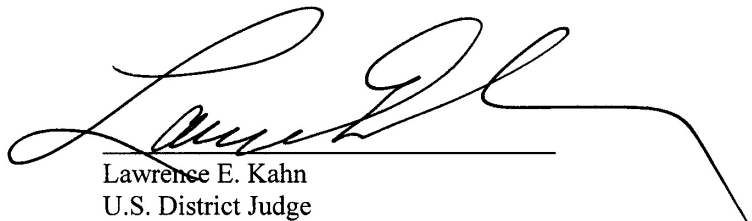
**WHEREFORE**, it is hereby

**ORDERED**, that Petitioner’s application for a Certificate of Appealability (Docket No. 52) is denied, and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: January 02, 2008  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge

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<sup>1</sup> Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed “unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” See Fed.R.App.P. 22(b).